notice of motion should state the several objections relied upon. Here, the grounds of objection are fully set out in the affidavit and as both the notice of motion and the affidavit were served on the plaintiff at the same time, it cannot be said that he was taken by surprise. In the case of *Baillie* v. *Goodwin & Co.*,[2] a preliminary objection was taken that the notice of motion did not set out the objections intended to be relied upon in pursuance of Order 70 rule 3. Notwithstanding the failure to comply with Order 70 rule 3, North J. made an order setting aside the service of the writ. He held that the failure to comply with Order 70 rule 3 was only a ground for depriving the party of their costs.

The objection fails and this application will be heard on a date to be fixed.

Objection overruled.

Solicitors: *Sault, Keith Sellar & Co.; Xavier & Thambiah.*

LING SEE LOCK v. SUPERVISOR OF ELECTIONS & ORS.

[O.Cr.J. (MacIntyre J.) March 19, 1965]

[Ipoh — Miscellaneous Criminal Application No. 21 of 1964]

Election — Failure to transmit declaration and return of election expenses within prescribed time — Authorized excuse — Election Offences Ordinance, 1954, s. 30(1) — Procedure.

The appropriate procedure for an order of allowance of an authorized excuse for failure to transmit a declaration and return of election expenses within the prescribed time is by way of originating motion. The application may be made *ex parte*. In this case it was held on the evidence that the applicant had an authorized excuse for his failure to transmit to the proper officer within the prescribed time the return and declaration regarding his election expenses.

CRIMINAL APPLICATION.

Applicant in person.

Mohd. Daim bin Haji Mohd. Zainuddin (Deputy Public Prosecutor) for the Public Prosecutor.

MacIntyre J.: This application is intituled Miscellaneous Criminal Application No. 21 of 1964. Because the application is made under the provisions of section 30(1) of the Election Offences Ordinance No. 9 of 1954 for an order of allowance of an authorised excuse for failure to transmit a declaration and return of election expenses within the prescribed time, it is regarded as falling within the criminal jurisdiction of the court. It would appear that in England the normal practice under section 21 of the Municipal Elections (Corrupt and Illegal Practices) Act of 1884, which corresponds to section 30(1) of our Election Offences Ordinance is to make the application *ex parte* and by way of a notice of motion. The procedure in England is prescribed by law but our Ordinance does not prescribe the procedure for applications under section 30(1). In the circumstances I would have thought that the appropriate procedure here would be by way of an originating motion.

Be that as it may, I do not think that the provisions of section 30(1) require the supervisor of elections, the Public Prosecutor, and the rival candidate or candidates to be cited and served as respondents. What the section requires it that "the other candidate, the proper officer and any elector within the constituency, electoral ward or electoral district" should be given an opportunity of being heard. That does not, in my opinion, imply that the interested persons should be cited and served as respondents, as it has been done in the present application before me. It would be absurd, for instance, to read into this section a requisition which would imply that every elector within an electoral area should be cited and served as respondent; and yet I see no reason if that was the implication, why a distinction should be drawn as regards procedure between the rival candidate and the proper officer on the one hand and the elector on the other. My reading of the section is that all that is required to be done in this context, is to notify the parties of their right to be heard and of the date, time and nature of the proceedings by serving the notice, either personally, if possible, or by advertisement in the local press.

Again, I am not at all certain that the "proper officer" to be served is the supervisor of elections and not the returning officer who was in charge of the election within the particular electoral area. However, in this case, I consider the service on the supervisor of elections as sufficient notice on the returning officer.

In my opinion, the Public Prosecutor should not have been made a respondent on this application. The learned deputy public prosecutor, who incidentally appeared on behalf of the Public Prosecutor and the supervisor of elections and consented to an order of allowance of an authorised excuse justified his being made a party to this application by virtue of the provisions of 23(1) of the Ordinance. With due respects, I disagree with that view, since that section has nothing to do with the question of procedure under section 30(1).

However, in view of the practice in vogue in this High Court, I do not propose to strike out this application. I shall treat it as an *ex parte* application by striking out the names of the respondents from the record.

I am satisfied from the evidence before me that the applicant has an authorised excuse

within the meaning of section 30(1) of the Election Offences Ordinance for his failure to transmit to the proper officer within the prescribed time a return and declaration regarding his election expenses, and I made the order accordingly.

Order accordingly.

CHUNG KHIAW BANK LTD. v. FOUR SEAS COMMUNICATIONS BANK LTD.

[O.C.J. (Ambrose J.) March 31, 1965]

[Singapore — Suit No. 427 of 1963]

Company Law — Shares — Equitable mortgage of — Notice — Priority — Lien on shares in respect of debt incurred after notice — Companies Ordinance (Cap. 174), ss. 96 and 102.

The sole issue in this case is whether the defendant company is entitled to disregard notice of an equitable mortgage of shares in the defendant company made by the registered holder in favour of the plaintiff and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

Held: the defendant company is not entitled to disregard notice of the equitable mortgage of shares in the defendant company made by the registered holder in favour of the plaintiff, and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

Cases referred to:—

(1) *Bradford Banking Co.* v. *Briggs* (1886), 12 App. Cas. 29.

(2) *Hopkinson* v. *Rolt* (1861), 9 H.L.C. 514.

(3) *Rearden* v. *Provincial Bank of Ireland*, [1896] 1 Ir.R. 572.

(4) *Dearle* v. *Hall* (1826), 3 Russ. 1 at p. 12.

(5) *Rainford* v. *James Keith & Blackman Co.*, [1905] 2 Ch. 147 at p. 161.

(6) *Mackereth* v. *Wigan Coal & Iron Company Limited*, [1916] 2 Ch. 293.

(7) *New London & Brazilian Bank* v. *Brocklebank* (1882), 21 Ch. D. 302.

CIVIL SUIT.

C. F. J. Ess for the plaintiff.

T. H. A. Potts for the defendant.

Cur. Adv. Vult.

Ambrose J.: The sole issue in this case is an issue of law. It is whether the defendant company is entitled to disregard notice of an equitable mortgage of shares in the defendant company made by the registered holder in favour of the plaintiff, and to claim priority under its articles for its lien on the shares in respect of a debt incurred by the registered holder after the notice.

The relevant facts are not disputed and are as follows. The defendant company was originally known as Sze Hai Tong Banking and Insurance Company Limited. By a special resolution passed on the 29th May, 1957, it changed its name to Sze Hai Tong Bank Limited. By a further special resolution passed on the 29th July, 1964 it changed its name to Four Seas Communications Bank Limited. Lam Joo Chong (whom I will call Lam) was a member of the defendant company. On the 2nd February, 1957, Lam deposited with the plaintiff a certificate of 225 shares in the defendant company, which were registered in his name, as security for repayment of all sums advanced to him by the plaintiff on his current account. And on the same day the plaintiff gave the defendant due notice in writing of the security. On the 4th February, 1957, the defendant replied to the plaintiff claiming a first and paramount lien upon the shares under article 25 of its articles of association. On the 29th July, 1957, Lam deposited with the plaintiff as further security a further certificate of 225 shares in the defendant company which were registered in his name.

On the 4th November, 1959, Lam guaranteed in writing the account of Paramount Traders Ltd. with the defendant. Lam was a shareholder and director of Paramount Traders Ltd. On the 17th May, 1962, the defendant gave written notice to Lam requiring him to pay the sum of $80,000 pursuant to his guarantee and stating that, in the event of his failing to pay the required sum within ten days, the 450 shares deposited with the plaintiff would be sold by the defendant, together with 112 bonus shares to which Lam was entitled. Subsequently the defendant sold the shares and bonus shares.

Article 25 of the articles of association of the defendant company provides as follows:

"The Company shall have a first and paramount lien upon all the shares registered in the name of a member (whether solely or jointly with others), and upon the proceeds of sale thereof, for all calls upon such shares, and also for all debts, obligations, engagements and liabilities of such member, solely or jointly with any other person, to or with the Company, whether the period of the payment, fulfilment, or discharge thereof shall have actually arrived or not; and such lien shall extend to all dividends from time to time declared on such shares, and shall have priority over all debts, obligations, engagements and liabilities of such member to or with any other person, notwithstanding that any such last mentioned debt, obligation, engagement or liability was incurred or undertaken prior in date to any debt, obligation, engagement or liability to or with the Company in respect of which it may claim to exercise the lien conferred on it by this Article, and notwithstanding that the Company had full notice thereof."

Counsel for the plaintiff cites *Bradford Banking Co.* v. *Briggs*,[1] for the proposition that a company is not entitled to disregard notice of an equitable mortgage of shares in the company and to claim priority for its lien under its articles in respect of a debt incurred after the notice. In that case the facts were these. Article 103 of the articles of association of the